

P-479/EL-88-381, P-479/EM-88-919, P-999/CI-88-917 DENYING REVOCATION OF ELECTION  
AND GRANTING AUTHORITY PENDING OUTCOME OF CONTESTED CASE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of a Request by International Telecharge, Inc. to Elect under Minn. Stat. § 237.58 and Then Subsequently to Withdraw its Election as Premature and to Completely Revise its Tariff Book

ISSUE DATE: March 30, 1989

DOCKET NOS. P-479/EL-88-381, P-479/EM-88-919, P-999/CI-88-917

ORDER DENYING REVOCATION OF ELECTION AND GRANTING AUTHORITY PENDING OUTCOME OF CONTESTED CASE

PROCEDURAL HISTORY

On June 25, 1987 International Telecharge Inc. (ITI or the Company) applied to the Minnesota Public Utilities Commission (the Commission) for authority to resell telephone services in Minnesota. By Order of November 4, 1987 the Commission approved the Company's application.

On June 9, 1988, the Company elected to be governed by the lessened regulation of Minn. Stat. § 237.58, et seq. The Company also consolidated its long distance charges resulting in rate decreases for its customers. In July, ITI withdrew its election but asked that the rate changes be allowed.

In its Report of Investigation and Recommendation of November 17, 1988, the Department of Public Service (DPS or the Department) recommended that the Commission approve the consolidation of rate schedules but stated that the Company as a reseller of long distance service could not revoke its election to be governed by Minn. Stat. 21 237.58, et seq. The Department further recommended that the Company be required to meet certain conditions in providing Alternative Operator Services (AOS).

On December 13, ITI filed comments on the DPS recommendation regarding the Company's request to withdraw its petition to elect under Minn. Stat. § 237.58.

FINDINGS AND CONCLUSIONS

### Revocation of Election

The first issue the Commission must decide is whether a company which has elected under Minn. Stat. § 237.58 to be governed by Minn. Stat. §§ 237.59, 237.60, and 237.62 can withdraw that election.

The Commission notes that in November, 1987 ITI was certified as a reseller of telecommunications service in Minnesota. In June, 1988 the Company elected to be subject to the lessened regulation of Minn. Stat. §§ 237.58 et seq. Among other things, those statutes allow a company to implement rate changes on an expedited basis if the services involved are subject to emerging or effective competition. Minn. Stat. § 237.59 explicitly finds toll service to be a competitive service.

The Commission notes that Minn. Stat. § 237.58, subd. 1 provides:

This section and sections 237.59, 237.60, and 237.62 do not apply to a telephone company unless the company notifies the commission in writing of its decision to be subject to all of those sections. The company may not revoke its decision to be subject to those sections. (Emphasis supplied.)

The plain language of the statute prohibits ITI from revoking its election as a reseller. The Commission will deny the Company's request to withdraw its election.

### Authority as an Alternative Operator Service Provider

The Commission must next determine whether ITI should be granted authority to operate as an alternative operator service (AOS) provider during the pendency of the Commission's investigation into that service.

As stated above, ITI received authority to operate as a reseller of telecommunications services in 1987. At that time, it was commonly understood that the Company was a reseller of long distance services which provided operator services in a manner similar to AT&T.

Today, the Commission understands that ITI does not provide direct dialed long distance services (customers subscribing to long distance services in equal or non-equal access offices) as its primary business. The Company provides long distance service only through the use of an operator. All calls placed through ITI incur an operator surcharge and long distance usage charges for that portion of the call. ITI provides operator-assisted long distance service to captive customers such as hotels, hospitals, and pay phones. In short, ITI is an AOS company.

On October 26, 1988, the Commission initiated an investigation to determine whether alternative operator services were in the public interest, whether they should be classified as emergingly competitive under Minn Stat. § 237.59, subd. 5 (1988), and whether they should be rate-regulated. Order Consolidating Dockets and Notice and Order for Hearing, October 26, 1988, Docket Nos. P-485/NA-88-291, P-478/M-88-359. The Commission subsequently consolidated petitions from other companies into this investigation and ordered contested case proceedings. Order Accepting Withdrawal of Petition, Consolidating Dockets and Notice and Order for Hearing, December 16,

1988, Docket No. P-999/CI-88-917. The Company is part of the Commission's current investigation into the provision of that service. See, In the Matter of the Applications for Authority to Provide Alternative Operator Services in Minnesota, P-999/CI-88-917.

The Commission believes that it is appropriate to grant ITI authority to provide operator services during the pendency of its AOS investigation. ITI has been an authorized provider of long distance services since November, 1987. Before granting the Company authority to operate, the Commission examined its management and financial condition and found that they demonstrated an ability to provide safe, reliable service and to respond promptly to customer complaints. The Company appears to be willing and able to design its operator services business to meet public safety and consumer protection concerns and to protect the interests which underlie them.

The Commission concludes that the public interest would be adequately protected by conditioning a grant of authority for the pendency of the above-described proceeding to ITI on prior approval of a tariff filing adequately addressing the following concerns: customer access to the provider of operator services, adequate notice to consumers regarding price and alternative service providers, quality of service, procedures for handling emergency calls, billing and collection procedures, procedures for handling customer complaints and refunds, and compliance with statutory requirements regarding maintaining an office in the state. See, ORDER CONSOLIDATING DOCKETS AND NOTICE AND ORDER FOR HEARING, Docket NOs. P-485/NA-88-291, P-478/M-88-359 (October 26, 1988).

The end user of the Company's operator services will not usually be someone with whom the Company has contracted to provide service. The other party to that contact will normally be a hotel, motel, or pay phone owner, whose cooperation will be essential to meaningful compliance with the terms of this Order. The Commission will therefore require the Company to incorporate terms designed to meet the above-listed concerns in its contracts with host facilities and to file form contracts with the Commission for review and approval.

This grant of authority is not based on any finding regarding the competitive or noncompetitive nature of operator services, but on a factual finding that this Company, operating under the constraints imposed by this Order, under careful monitoring by the Department, can in all likelihood provide operator services without jeopardizing the public interest. Today's decision does not imply Commission acceptance of any position under examination in the contested case proceedings.

#### Proposed Tariff Changes

The Commission must determine whether the tariff changes proposed by the Company result in fair and reasonable rates.

The Commission finds that the rates proposed by the Company reflect some geographical deaveraging and price discrimination. This is because the Company's rate schedules track those of AT&T and Northwestern Bell Telephone Company. Calls of equal distance would be charged at different rates, then, if one crossed a LATA boundary and was charged at AT&T rates, while the other remained intra-LATA and was charged at Northwestern Bell rates. Similarly, a customer using interLATA operator services would pay a different rate from one using intra-LATA operator

services, solely because the call being placed crossed a LATA boundary.

The price differential for long distance rates contravenes established Commission policy on geographical deaveraging. The price differential for operator services is unreasonable price discrimination under Minn. Stat. § 237.09 (1988), since the Company has not demonstrated that LATA boundaries bear any reasonable relationship to the pricing of operator services.

The Commission has recently reaffirmed its opposition to geographical deaveraging in a proceeding entitled In the Matter of the Petition of the Office of the Attorney General for an Order Concerning Geographically Deaveraged Long-Distance Rates, Docket No. P-999/C-88-615. In that proceeding the Commission required all telephone companies which were parties to the proceeding and had elected alternative regulation to file geographically averaged rates. Order Granting Petition and Requiring Filing, November 23, 1988, Docket No. P-999/C-88-615. ITI's situation is identical to the one treated there, and the Company will be required to file averaged rates before its tariff filing will be approved.

The Commission concludes that the public interest would be adequately protected by conditioning a grant of authority to ITI on prior approval of a tariff filing doing the following: (1) adequately addressing the public safety and consumer protection concerns expressed in the October 26 and December 16 Orders; (2) including form contracts with host facilities designed to ensure their cooperation with the terms of this Order, and (3) eliminating geographical deaveraging and price discrimination from the Company's long distance and operator service rates.

### ORDER

1. International Telecharge, Inc.'s request to withdraw its election to be governed by Minn. Stat. §§237.58, et seq. is hereby denied.
2. International Telecharge, Inc. is granted authority to provide operator services to pay telephone customers, and to customers using telephones in hotels, motels, and hospitals while contested case proceedings in this matter are being conducted, subject to the conditions specified in Docket No. P-999/CI-88-917, including:
  - a. Prior Commission approval of a tariff filing adequately addressing the seven public safety and consumer protection concerns discussed herein.
  - b. Prior Commission approval of form contracts with host facilities incorporating terms designed to ensure compliance with the terms of this Order;
  - c. Prior Commission approval of a tariff filing eliminating geographical deaveraging and price discrimination from the Company's long distance rates and operator service charges.
3. The Department of Public Service shall monitor the provision of operator services by ITI

and promptly report to the Commission any violation of the terms of this Order.

4. This grant of authority may be revoked at any time upon a Commission finding that the Company has violated any of the terms of this Order.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen  
Executive Secretary

(S E A L)